19

Office - Supreme Court, U. S.
FILED
FEB 4 1952
CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1950

## No. 16

MARY B. JOHNSON,

*Petitioner,*

vs.

JAMES N. JOHNSON,

## BRIEF OF RESPONDENT JAMES N. JOHNSON IN OPPOSITION TO PETITION FOR CERTIORARI TO SUPREME COURT OF FLORIDA

L. J. CUSHMAN,
Solicitor for Respondent

CUSHMAN, GAY & WOODARD,
On the Brief.

# INDEX

## RESPONDENTS BRIEF


Page

**No Federal Question was raised on Appeal to Supreme Court of Florida** ..... 2

**The "Full Faith and Credit" clause of the Constitution was never drawn into question before the Supreme Court of Florida, nor by its decision** ..... 6

**This Court cannot take Judicial Notice of the Law of Maryland in this Proceeding** ..... 19

**No claim was ever advanced in the State Courts that any rights guaranteed by the 14th Amendment were infringed, and the record affirmatively refutes that contention** ..... 23

**On her appeal to the Supreme Court of Florida, Petitioner, as Appellant, abandoned any contention that the trial Court had erred in finding against her on the issue of jurisdiction** ..... 23, 24

**The "Due Process" clause does not confer jurisdiction on this Court to review the decree of a State Court upon the mere ground that the State Court erroneously decided an issue properly before it** ..... 26

**The Record affirmatively refutes any contention that Petitioner was denied due process of law** ..... 27

## TABLE OF CITATIONS

### CASES


| | Page |
|---|---|
| ALLEN v. TOWN OF LARGO, (Fla.) 39 So. (2d) 549 | 13 |
| BAILEY v. ANDERSON, 326 U. S. 203 | 2 |
| BONNER v. GORMAN, 213 U. S. 86 | 25 |
| BRYANT v. GODFREY, (Fla.-1949) 40 So. (2d) 833, 834 | 3 |
| CHICAGO AND ALTON R. R. CO. v. WIGGENS FERRY CO., 119 U. S. 615 | 8, 22 |
| COHEN v. COHEN, 158 Fla., 802, 30 So.(2d) 307, 309 | 14 |
| COLLINS v. COLLINS, 160 Fla., 732, 36 So.(2d) 417 | 11 |
| COLUMBIAN NAT. LIFE INS. CO. v. LANIGAN, 154 Fla. 760, 19 So.(2d) 67 | 9 |
| COOK v. CARUTHERS, 87 Fla., 238, 99 So. 559 | 24 |
| CORRIGAN v. BUCKLEY, 271 U. S. 323 | 27 |
| EX PARTE POWEL, 20 Fla. 806 | 13 |
| HANLEY v. DONOGHUE, 116 U. S. 1 | 7 |
| HASTINGS v. HASTINGS, (Fla.) 45 So.(2d) 115 | 14 |

TABLE OF CITATIONS — Continued


Page

JOHNSON v. JOHNSON, 49 So.(2d) 341 ..... 1, 5, 15, 23

LLOYD v. MATTHEWS, 155 U. S. 222 ..... 15

LYNCH v. PEOPLE, etc., 293 U. S. 52 ..... 5

MELLON v. O'NEIL, 275 U. S. 312 ..... 2

MITCHELL v. MASON, 61 Fla. 692, 55 So. 387 ..... 24

RAMSEY v. McKINNEY, 111 Fla. 387, 149 So. 553 ..... 12

RED TOP CAB & BAGGAGE CO. v. DORNER, 159 Fla. 538, 32 So.(2d) 321, 323 ..... 4

RENAUD v. ABBOT, 116 U. S. 277 ..... 22

SAMMIS v. WIGHTMAN, 31 Fla. 10, 12 So. 526 ..... 8

SHERRER v. SHERRER, 334 U. S. 343 ..... 27

UNITED MERCANTILE AGENCIES v. BISSONNETTE, 155 Fla. 22, 19 So.(2d) 466 ..... 9


TEXTS


3 FREEMAN ON JUDGMENTS 2863 ..... 7

15 R.C.L. 1063 ..... 13

IN THE

# SUPREME COURT OF THE UNITED STATES

MARY B. JOHNSON,
Petitioner,

vs.

JAMES N. JOHNSON,
Respondent.

**RESPONDENT'S BRIEF**

MARY B. JOHNSON, as Petitioner, seeks Certiorari to review a Judgment of the Supreme Court of Florida (**Johnson v. Johnson, 49 So.(2d) 341**) affirming a decree (R. 302-303) of divorce rendered against her by the Circuit Court of Dade County, Florida.

We are confident that Certiorari should be denied:

**FIRST:** Because no Federal Question was raised on Appeal to the Supreme Court of Florida.

**SECOND:** Because the "Full Faith and Credit" clause of the Constitution was never drawn into question before the Supreme Court of Florida, nor by its decision.

**THIRD:** Because no claim was ever advanced in the State Courts that any rights guaranteed by the 14th Amendment were infringed, and the record affirmatively refutes that contention.

We shall discuss these proposition in the order stated.

## I

### No Federal Question Was Raised On Appeal To Supreme Court of Florida

Section 1257(3) Title 28 U. S. Code requires that the "right, privilege or immunity * * * under the Constitution" of the United States relied upon to invoke the jurisdiction of this Court "be specially set up or claimed" in the State Court whose decision is sought to be reviewed, before this Court can acquire jurisdiction, and the record must affirmatively show that such right was specially set up or claimed: **BAILEY v. ANDERSON, 326 U. S. 203, 66 S. Ct. 66, 90 L. Ed. 3.** It must affirmatively appear upon the face of the record that the Federal question relied upon to invoke the jurisdiction of this Court was presented in and expressly decided by the State Court, and as Mr. JUSTICE SANFORD declared in **MELLON v. O'NEIL, 275 U. S. 312, 48 S. Ct. 62, 72 L. Ed. 245:**

> "It is not enough that there may be somewhere hidden in the record a question which if it had been raised would have been of a federal nature. Dewey v. Des Moines, 173 U. S. 193, 199, 43 L. Ed. 665, 666, 19 Sup. Ct. Rep. 379; Keokuk & H. Bridge Co. v. Illinois, 175 U. S. 626, 634, 44 L. Ed. 299, 302, 20 Sup. Ct. Rep. 205; Whitney v. California, supra."

Petitioner's jurisdictional statement (Petition: p. 2; Brief: p. 14) fails to point to any page of the record where the Federal questions now relied upon to invoke the jurisdiction of this Court, or any Federal question, or claim of right, privilege or immunity under the Constitution

of the United States was ever "specially set up or claimed," in the Supreme Court of Florida, and we shall endeavor to show by the record that no such right, privilege or immunity was "specially set up or claimed" in that Court as required to confer jurisdiction on this Court, and therefore her petition should be denied. The Rules of the Supreme Court of Florida governing appeals provide (Rule 2-c) for filing Notice of Appeal, and (Rule 39) the form of such notice. The procedure for perfecting an appeal is prescribed by Rule 11, paragraph (a) of which provides that: "* * * the appellant shall file with the Clerk of the Trial Court his Assignments of Error * * * *" Paragraph 2(a) of the same rule expressly provides that: "The questions raised or the grounds of appeal * * * as reflected by the Assignments of Error shall control the contents of the record on appeal." Rule 8 expressly provides as follows:

> **"Hearing to be on Transcript and assignment of errors.** No cause shall be heard until a transcript of the record thereof shall be filed in accordance with the rules of this Court, and no assignment of errors will be heard or considered which is not properly based upon the transcript of the record as made up and prepared under rules governing the preparation of transcripts of record."
>
> **Rule 8—Supreme Court Rules of Practice, 30 F.S.A. 25.**

The Supreme Court of Florida is limited on appeal to consideration of Appellant's Assignments of Error, as the Court held in **BRYANT v. GODFREY (Fla.-1949) 40 So.(2d) 833, text 834:**

"In the case of City of Coral Gables, et al., v. State ex rel. Hassenteufel, Fla., 38 So. (2d) 467, 468, we held: 'Limited by the assignments of error, the case on appeal is a review by this Court of the same matter as previously considered and passed on by the lower court. This Court's decision and opinion is on the case as made on appeal and not essentially on 'questions' as framed by counsel.' The questions presented may and can be helpful when they are limited, as they should be, to a direction of our attention to alleged reversible error and are correlated to the assignments of error."

In **RED TOP CAB & BAGGAGE CO. v. DORNER, 159 Fla. 538, 32 So. (2d) 321, text 323,** Mr. Justice Barns, speaking for the Court said:

"The trial judge can only be reversed for the errors presented by the assignments and the brief of appellant of necessity should be addressed to the trial judge's acts of harmful error which should have been presented by the assignments. The brief is in support of the assignments which the appellant by way of argument resolves into 'questions involved.'

* * * *

On appeal such assignments serve as a declaration or complaint against the trial judge and the proof vel non of the assignment is within the record-on-appeal. An appeal without an assignment of error would be similar to a suit without a complaint, bill or declaration.

> The assignments of error and the 'questions involved' should be correlated and it takes at least one assignment to support any such 'questions' ".

Examination of Petitioner's Assignments of Error (R. 307-308), the basis of her appeal, shows that she did not "specially set up or claim" any right or privilege under the Constitution of the United States. The Third exception (R. 307) assigned as error the overruling of Petitioner's exceptions to the Special Master's Report, but examination of those exceptions (R. 298-300) shows that no such claim was specially set up or made even at that time. Thus, it is clear that Petitioner, as Appellant, did not raise either one of the Federal questions relied upon to support her petition for certiorari, and her Assignments of Error (R. 307-308) presented no such questions for adjudication. Counsel for Petitioner, obviously realizing that neither of the Federal questions relied upon in Petitioner's Petition and Brief were raised upon the record upon which the judgment of affirmance by the Supreme Court of Florida (**Johnson v. Johnson, 49 So.(2d) 340**) was based has attempted to repair that fatal omission by having the Clerk of the Supreme Court of Florida transmit to this Court as part of the record on appeal (R. 317-340) the Brief filed on her behalf as Appellant before the Supreme Court of Florida, in which, during the course of the argument, it was claimed that the lower court had failed to give full faith and credit to the Maryland decree. This, however, was not sufficient as the Court pointed out by Chief Justice Hughes, speaking for this Court in **LYNCH v. PEOPLE, etc., 293 U. S. 52, 55 S. Ct. 16, 79 L. Ed. 191:**

"The Court of Appeals of the State affirmed the order of the Appellate Division, but without opinion (263 N. Y. 533, 189 N. E. 684), and the grounds of its decision are left to conjecture. It may be surmised, from the quotations in its opinion, that the Appellate Division intended to rest its decision upon a determination of the application of the Fourteenth Amendment, and that the affirmance by the Court of Appeals went upon the same ground, and not upon the non-federal ground of the application of the Constitution and laws of the State. But jurisdiction cannot be founded upon surmise. **Nor can claim of jurisdiction be sustained by reference to briefs and statements which are not part of the record.**"

We therefore submit that since neither Federal question relied upon to support Petitioner's Application for Certiorari, nor any other Federal questions were presented to the Supreme Court of Florida, the record fails to establish the jurisdiction of this Court to entertain the Petition.

## II

**The "Full Faith and Credit" clause of the Constitution was never drawn into question before the Supreme Court of Florida, nor by its decision.**

The "Full Faith and Credit Clause" (Sec. 1 of Art. 4, Const.) implemented by Sec. 1739 Title 28 USCA, requires that decrees or judgments of one state, shall "have the same faith and credit" in the courts of other states "as they have by the law or usage in the Courts of the State

* * * from which they are taken." Thus, the "faith or credit" which should be given a judgment or decree, depends upon the law of the state where it was rendered. In 3 **Freeman on Judgments 2863**, the author says:

> "The first question to be determined in regard to a judgment of another state, after jurisdictional inquiries have been satisfactorily answered, is, what is its effect in the state whence it was taken? The effect which it has there is precisely the effect which must be accorded it in every other state."

Hence, in the case at bar, **the effect** of the Maryland decree depended upon the law of Maryland, and, as Mr. Justice Gray, speaking for this Court said in **HANLEY v. DONOGHUE, 116 U. S. 1, 6 S. Ct. 242, 29 L. Ed. 535:**

> "Congress has not undertaken to prescribe in what manner **the effect** that such judgments have in the courts of the state in which they are rendered shall be ascertained, and has left that to be regulated by the general rules of pleading and evidence applicable to the subject.
>
> Upon principle therefore, and according to the great preponderance of authority (as is shown by the cases collected in the margin), whenever it becomes necessary for a court of one State, in order to give full faith and credit to a judgment rendered in another state, to ascertain the effect which it has in that state, the law of that state must be proved, like any other matter of fact."

Chief Justice WAITE, speaking for the Court in **CHICAGO AND ALTON R. R. CO. v. WIGGENS FERRY CO., 119 U. S. 615, 7 S. Ct. 398, 30 L. Ed. 519,** considering the "Full Faith and Credit Clause" said:

> "Whenever it becomes necessary under this requirement of the constitution for a Court of one state, in order to give full faith and credit to a public act of another state, to **ascertain what effect it has** in that state, the law of that state must be proved as a fact. No court of a state is charged with knowledge of the laws of another state; but such laws are in that court matters of fact, which, like other facts, must be proved before they can be acted upon."

It is the settled rule in Florida that the Courts of Florida do not take judicial notice of the laws of the other states, and that the laws of other states are **facts** to be pleaded and proved like other facts. Thus, in **SAMMIS v. WIGHTMAN, 31 Fla. 10, 12 So. 526,** in an action on a New York judgment, Chief Justice RANEY, speaking for the Court (text 532) said:

> "The laws of our sister states are facts to be pleaded and proved like other facts. Summer v. Mitchell, 29 Fla. 179, 10 South. Rep. 562; Tuten v. Gazan, 18 Fla. 751; Hanley v. Donoghue, 116 U. S. 1, 5, et seq., 6 Sup. Ct. Rep. 242. We do not take judicial notice of them; nor is the view which has been adopted in some states (Paine v. Insurance Co., 11 R. I. 411; State v. Hinchman, 27 Pa. St. 479; Rae v. Hulbert, 17 Ill. 572; Black,

> Judgm. ¶ 860) as ground for taking such notice in cases of the character now before us—that the supreme court of the United States takes the same notice on writs of error to a state court in these cases—correct. It does not take such notice. On the contrary, its doctrine and practice is not to take judicial notice of the law of another state, not proved in the court of the state in which the suit or the judgment was brought and made a part of the appeal record, unless the latter court takes such notice by the local law of that state. Hanley v. Donoghue, supra."

In **COLUMBIAN NAT. LIFE INS. CO. v. LANIGAN, 154 Fla. 760, 19 So.(2d) 67,** SEBRING, J., speaking for the Court (text 70) said:

> "The general rule is that when the law of a foreign state is relied on as governing a given transaction **it must be pleaded and proved as any other issue of fact;** for the local courts will not take judicial notice of it."

and in **UNITED MERCANTILE AGENCIES v. BISSONNETTE, 155 Fla. 22, 19 So. (2d) 466,** in an action in Florida on an Ohio judgment based upon a cognovit note, SEBRING, J., re-stated the rule:

> "It is held in this jurisdiction that a judgment conclusive in a sister state where rendered is conclusive here, under the 'full faith and credit clause' of the Federal Constitution, Art. 4, ¶ 1,

and applicable Federal Statutes. The fact that a judgment of a sister state is of a character or in a form which would not be permissible in a domestic judgment is not of itself a valid ground for refusing it recognition. * * * When, however, such a judgment is brought here for enforcement, the law of the sister state authorizing and making such judgment valid must be shown by pleading and proof by the one who seeks enforcement before the courts of this state will accord it recognition. The courts of this state do not take judicial notice of the law of a sister state even in actions brought here on judgments obtained in another state. Sammis v. Wightman, 31 Fla. 10, 12 So. 526. **Though section 1 of Article 4 of the Federal Constitution requires that full faith and credit shall be given in each state to the judicial proceedings of any other state, the constitutional mandate entails no obligation upon the courts of justice of sister states to judicially know the law of any other state governing the effect of a judgment in controversy. Questions of presumptions or judicial notice are always for the law of the forum. The courts of the forum not being judicially charged with knowledge and hence not bound to take judicial notice of the laws of other states, such foreign laws must be pleaded and proved as ultimate facts,** insofar as it may be necessary to establish the validity of a judgment in the state where rendered. Sammis v. Wightman, supra; Equitable Building & Loan Association v. King, 48 Fla. 252, 37 So. 181; Baggett v. Davis, 124 Fla. 701, 169 So. 372. In the absence of an allegation

of such ultimate facts in the pleadings the presumption will obtain that the law of the sister state is the same as the law of the forum, and the case will proceed to ultimate conclusion upon such presumption. Barnes v. Liebig, 146 Fla. 219, 1 So. (2d) 247; Columbian National Life Insurance Company v. Lanigan, Fla., 19 So. 2d 67. * * * In the case at bar the plaintiff is suing upon a judgment entered in the courts of the State of Ohio. It may be that the State of Ohio permits the entry of judgment rendered under a power of attorney to confess judgment; we do not take judicial notice of such fact. But if the judgment sued upon was entered by such authority, it was rendered in a manner unknown to the jurisprudence of our state."

In **COLLINS v. COLLINS, 160 Fla. 732, 36 So.(2d) 417**, in an action on a New York alimony decree, ADAMS, J., speaking for the Court said:

"There may be found some authority for a court to notice the law of a sister state. See Wigmore on Evidence, 2d Ed., Vol. 5, page 582, Sec. 2573, and Paine v. Schenectady Ins. Co., 11 R. I. 411. But by more than a score of cases covering the entire history of this court and without a single exception we have held consistent with the great weight of authority that foreign law is a fact to be plead and proven. See 20 Am. Jur., Evidence, page 70, Sec. 47; Tuten v. Gazan, 18 Fla. 751; Duke v. Taylor, 37 Fla. 64, 19 So. 172, 31 L.R.A. 484, 53 Am. St. Rep. 232; Cohen v. Cohen, 158 Fla. 802, 30 So. 2d 307; Barnes v. Liebig, 146

Fla. 219, 1 So. 2d 247 and a host of cases in the interim.

We can see no reason at this time to assume the insurmountable burden of ascertaining the statute and case law of each of the several states. If we did, the contention undoubtedly would be made that we should also take notice of the law of each sovereign nation. When the contrary has not been alleged we have assumed the law of the other state to be the same as our own. Our holdings are consistent with settled principles of law and have served the interest of our state well. We shall not extend or depart from them now."

It is likewise the rule in Florida that the Supreme Court on appeal may judicially notice only matters of which the lower Court might have taken judicial notice, **where the source of the lower court's judicial knowledge is incorporated into the record of appeal,** as Chief Justice DAVIS pointed out in **RAMSEY v. McKINNEY, 111 Fla. 387, 149 So. 553:**

"The rule is that an appellate court will take judicial cognizance of any matter of which the court of original jurisdiction might take notice, where the party relying on the judicial knowledge of the lower court has procured and brought into the appellate court's records, the source of the lower court's judicial knowledge. 15 R.C.L. 1063."

15 R.C.L. 1063, cited by the Court states the rule as follows:

> "Appellate Courts—A higher court on appeal will take judicial cognizance of any matter of which the court of original jurisdiction might take notice. But what the original court cannot judicially notice the appellate court cannot notice when sitting in review."
>
> 15 R.C.L. "Judicial Notice"—1063
> Citing, inter alia, Yates v. Milwaukee,
> 10 Wall. 497, 19 U. S. (L. Ed.) 984
> Pennington v. Gibson
> 16 How. 65, 14 U. S. (L. Ed.) 847

The Supreme Court of Florida, in considering an appeal, is confined to the record on appeal, as the Court held in ex parte Powell, 20 Fla. 806:

> "This court on writ of error, will consider only such questions as are presented upon the record of the proceedings in the circuit court. We cannot assume that facts appeared on the hearing below which are not disclosed by the record."

In ALLEN v. TOWN OF LARGO, (Fla.) 39 So.(2d) 549, the court held:

> "Statements made in Appellant's briefs without any support in the record cannot be considered on appeal."

In **HASTINGS v. HASTINGS (Fla.) 45 So.(2d) 115,** the Court held:

> "Where occurrances during proceedings below are not reflected or indicated by the record in a divorce action, bare statements in the brief as to such occurrances will not be considered by the court."

and finally, in **COHEN v. COHEN, 158 Fla. 802, 30 So. (2d) 307, text 309,** Associate Justice CHILLINGWORTH said:

> "When one appeals from the judgment or decree of a trial judge, he impliedly represents harmful error of the trial judge. His client, as well as the appellate court, has a right to consider an appeal such a representation. A record of the proceedings below is presented here to establish such error, and for no other purpose.
>
> The record on appeal is made pursuant to the direction of appellant (as well as appellee), who had the privilege of establishing the proceedings in the lower court by the Judge's certificate, the Clerk's certificate, and, if these fail, there are other means. See 59.15 and 59.16 F.S.A.
>
> The law intends that proceedings before the trial judge might be reviewed here, as they occurred below. When counsel, in oral argument or in brief, attempted to fortify the record on appeal by matters dehors the record, it has a

great tendency to impress the appellate court that the appeal was improvidently taken, and that counsel is unwilling to rely upon the record to establish error. Without further reference to the impropriety of such action, it is evidence of weakness of position, and has a tendency to obscure the presentation of matters which might have merit."

The record on appeal upon which the judgment (**Johnson v. Johnson, 49 So.(2d) 341**) was based (R. 1-314) is devoid of any testimony, evidence or proof whatever, as to the law of Maryland, and hence, under the well settled rule governing appeals in Florida, statements of counsel in Appellant's brief as to the law of Maryland could not supply the lack of **evidence** or **proof** as to the law of Maryland, necessary to enable the Supreme Court of Florida, as an Appellate Court, to make a determination of the effect to be accorded the Maryland decree. The Supreme Court of Florida was therefore, of necessity, left to determine the case under the law of Florida, and the "Full Faith and Credit" Clause was therefore not drawn into question. That being the case, upon the authority of **LLOYD v. MATTHEWS, 155 U. S. 222, 15 S. Ct. 70, 39 L. Ed. 128**, it is clear no Federal question arose upon the appeal. In that case (Lloyd v. Matthews, supra) Chief Justice FULLER, speaking for this Court said:

"The Federal question upon which plaintiff relies to sustain our jurisdiction is that under the statutory law of Ohio, set out in his pleading, the transfer of the stock in question was void, and that the court of appeals of Kentucky in

rendering judgment did not give that full faith and credit to the public acts, records and judicial proceedings of the state of Ohio which the Constitution and the laws of the United States require. Const. art. 4 ¶ 1; Rev. Stat. ¶ 905.

The first error assigned is as follows:

'The court of appeals of Kentucky erred in the decision rendered in this case below, in failing to give full faith and credit to the laws of the state of Ohio which were presented in the pleadings; in failing to give full faith and credit to the judicial construction of such laws by the highest court of said state; and in failing to give full faith and credit to the judicial proceedings of the probate court of Hamilton county, Ohio, as set forth in the pleadings.'

We do not find that the record contains any judicial proceedings of the probate court of Hamilton county, Ohio, but suppose the reference to be to proceedings in insolvency upon the filing of the deed of assignment by Harper, under which Lloyd trustee, claims, and that such insolvency proceedings could have no greater effect on the question of title than allowed by the laws of Ohio in the matter of the preference of creditors.

The court of appeals of Kentucky held that, as the parties all resided in Ohio, and the entire transaction occurred there, its validity was to

be tested by the law in force there; that at common law a debtor had a right to prefer a creditor, either by payment or an express preference in a deed of assignment; that he had a right to pay his debt, and it was only by virtue of statutory law that such a payment could be held invalid and the creditors be compelled to surrender his advantage; that, in the absence of any showing of the existence of such a statute in another state, it must be presumed that the common law was in force there; that section 6343 of the Revised Statutes of Ohio, set out in the pleadings, did not appear 'to embrace a case like this one, but to relate alone to preferences made in deeds of assignment to trustees for creditors generally;' that his transfer could not properly be held to be a part of the deed of assignment; and that, tested by the rules of the common law, the preference was not invalid.

Now, in arriving at these conclusions, the court of appeals did not concur with the views of Harper's assignee, but does it therefore follow that full faith and credit was denied to the laws of Ohio and to the construction of such laws by the highest court of the state? The courts of the United States when exercising their original jurisdiction take notice, without proof, of the laws of the several states, but in the Supreme Court of the United States, when acting under its appellate jurisdiction, whatever was matter of fact in the state court whose judgment or decree is under review is matter of fact there.

And whenever a court of one state is required to ascertain what effect a public act of another state has in that state, the law of such other state must be proved as a fact. Chicago & A. R. Co. v. Wiggins Ferry Co. 119 U. S. 615 [30:519]; Hanley v. Donoghue, 116 U. S. 1 [29:535].

The court of appeals was obliged to determine the case on the record, and plaintiff in error had failed to plead the construction given the Ohio statutes by the courts of Ohio, or to introduce the printed books of cases adjudged in the state of Ohio, or to prove the common law of that state by the parol evidence of persons learned in that law, or to put in evidence the laws of that state as printed under the authority thereof, or a certified copy thereof, as provided by the law of Kentucky. Ky. Gen. Stat. 1888, chap. 37, p. 546, ¶ ¶ 17, 19.

The court of appeals was left, therefore, to construe the parts of the Ohio laws that were pleaded as it would local laws; and it is settled that, under such circumstances, where the validity of a state law is not drawn in question, but merely its construction, no Federal question arises. As was remarked in Glenn v. Garth, 147 U. S. 360, 368 [37: 203, 206]: 'If every time the courts of a state puts a construction upon the statutes of another state, this court may be required to determine whether that construction was or was not correct, upon the ground that if it was concluded that the construction was incorrect, it

would follow that the state courts had refused to give full faith and credit to the statutes involved, our jurisdiction would be enlarged in a manner never heretofore believed to have been contemplated.' Grand Gulf R. & Bkg. Co. v. Marshall, 53 U. S. 12 How. 165 [13: 938]; Cook County v. Calumet & C. Canal & D. Co. 138 U. S. 635 [34: 1110].

This record contains nothing to show, as matter of fact, that the public acts of Ohio had by law or usage in Ohio any other effect than was given them by the court of appeals of Kentucky. Writ of error dismissed."

Therefore, it is clear that in the case at bar, because of the failure of defendant (Petitioner here) to offer any testimony, evidence or proof as to the law of Maryland, the effect of the Maryland decree was never established, so as to require the Supreme Court of Florida to give that decree any faith, credit or effect to which it may have been entitled under the laws of Maryland, and the Supreme Court of Florida was free to determine its effect under the law of Florida as a question of purely local law, and hence, no Federal question was involved in its decision, and none is presented for consideration in the case at bar.

**This Court Cannot Take Judicial Notice of The Law of Maryland in This Proceeding.**

We have shown that under the decisions of this Court (Hanley v. Donoghue, supra; Chicago and Alton R.R. Co.

v. Wiggens Ferry Co., supra, and Lloyd v. Matthews, supra) the Supreme Court of Florida was not required by the "Full Faith and Credit Clause" (Sec. 1, Art. 4, Const.) to take judicial notice of the law of Maryland in determining the effect to be given the Maryland decree, and that in the absence of **proof in the record** as to the law of Maryland, statements in Appellant's Brief as to the law of Maryland could not supply the lack of evidence **in the record** necessary to prove the law of Maryland, and that in the absence of such evidence **in the record** the Supreme Court could not consider statements in Appellant's Brief as to the law of Maryland, it follows, under a long line of decisions of this Court, that the Supreme Court of the United States cannot take judicial notice of the law of Maryland. While it is undoubtedly true that this Court does, in many cases, take judicial notice of the laws of all of the states, that is not the rule which applies in a case, like the one at bar, in which this Court is reviewing a decision of a Court which, under the law of the jurisdiction in which it sat, did not do so. This rule was clearly stated by Mr. Justice GRAY in Hanley v. Donoghue, supra, (text 537) as follows:

> "In the exercise of its general appellate jurisdiction from a lower court of the United States, this court takes judicial notice of the laws of every State of the Union, because those laws are known to the court below as laws alone, needing no averment or proof. Course v. Stead, 4 Dall. 22, 27, [4 U. S. bk. 1, L. ed. 724, 726]; Hinde v. Vattier, 5 Pet. 398, [30 U. S. bk. 8 L. ed. 168]; Owings v. Hull, 9 Pet. 607, 625, [34 U. S. bk. L. ed. 246, 252]; United States v. Turner, 11 How. 663,

668 [52 U. S. bk. 13 L. ed. 856, 859]; Pennington v. Gibson, 16 How. 65, [57 U. S. bk. 14, L. ed. 846]; Covington Drawbridge Co. v. Shepherd, 20 How. 227, 230, [61 U. S. bk. 15 L. ed. 896]; Cheever v. Wilson, 9 Wall. 108 [76 U. S. bk. 19, L. ed. 604]; Junction R.R. Co. v. Bank of Ashland, 12 Wall. 226, 230, [76 U. S. bk. 20 L. ed. 385, 387]; Lamar v. Micou, 114 U. S. 218, [ante, 94]. **But on a writ of error to the highest court of a State,** in which the revisory power of this court is limited to determining whether a question of law depending upon the Constitution, laws or treaties of the United States has been erroneously decided by the state court upon the facts before it—while the law of that State, being known to its courts as law, is of course within the judicial notice of this court at the hearing on error—yet, as in the state court the laws of another state are but facts, requiring to be proved in order to be considered, **this court does not take judicial notice of them, unless made part of the record sent up, as in Green v. Van Buskirk,** [supra]. The case comes, in principle, within the rule laid down long ago by Chief Justice Marshall: 'That the laws of a foreign nation, designed only for the direction of its own affairs, are not to be noticed by the courts of other countries, unless proved as facts, and **that this court, with respect to facts, is limited to the statement made in the court below, cannot be questioned.**' Talbot v. Seeman [supra.]"

and again by Chief Justice WAITE in **CHICAGO AND ALTON R. R. CO. v. WIGGENS FERRY**, supra (text 522) as follows:

> "This court, and the other courts of the United States; when exercising their original jurisdiction, take notice, without proof, of the laws of the several States of the United States; **but in this court, when acting under its appellate jurisdiction, whatever was matter of fact in the court whose judgment or decree is under review, is matter of fact here.** This was expressly decided in Hanley v. Donoghue, 116 U. S. 1 [Bk. 29, L. ed. 535], in respect to the faith and credit to be given by the courts of one State to the judgments of the courts of another State, and it is equally applicable to the faith and credit due in one State to the public Acts of another."

In **RENAUD v. ABBOTT, 116 U. S. 277, 6 S. Ct. 1194, 29 L. Ed. 629, text 631**, Justice MATTHEWS said:

> "**This court,** upon writ of error to the highest court of a State, **does not take judicial notice of the law of another state, not proved in that Court and made a part of the record sent up,** unless by the local law that court takes judicial notice of it. Hanley v. Donoghue, ante 535."

This is the well settled rule in this Court: See Adam v. Senger, 303 U. S. 59, 58 S. Ct. 454, 82 L. Ed. 649, and note, 655-657. Had petitioner in the case at bar pleaded applicable statutes of Maryland, and applicable decisions of its courts to establish the effect of the Maryland decree in

that state, as the petitioner did in Adams v. Senger, supra, then the "full faith and credit clause" of the Constitution might have been drawn into question by the decision of the Supreme Court of Florida, but she chose not to do so, and further, offered no proof, as the record (R. 1-314) will disclose of either the statutes or decision of Maryland, and since under those circumstances, the Supreme Court of Florida could not take judicial notice of the law of Maryland, it follows that the citations in Petitioner's Brief cannot aid or support her Petition.

## III

**No claim was ever advanced in the State Courts that any rights guaranteed by the 14th Amendment were infringed, and the record affirmatively refutes that contention.**

The record on appeal, which was the basis for the judgment of the Supreme Court of Florida (**Johnson v. Johnson, 49 So. 2d 341**) here sought to be reviewed, fails to reveal that Petitioner, as Appellant, ever claimed, or contended, specifically or otherwise, that she had not been accorded "due Process" in the Florida proceedings. That claim is advanced for the first time in this Court in her petition (p. 7-8; 11-12) and brief (p. 31-37). The basis of that claim or contention in this Court (Petition, p. 7-8; 11-12; Brief, p. 31-37) is that the Florida Courts erroneously decided the issue of jurisdiction adversely to petitioner.

**On her appeal to the Supreme Court of Florida, Petitioner, as Appellant, abandoned any conten-**

**tion that the trial Court had erred in finding against her on the issue of jurisdiction.**

It is true that in the Florida proceeding Petitioner challenged the jurisdiction of the Florida Court, and contended (Exceptions R. 299) that James N. Johnson had failed to establish residence required to support jurisdiction, and challenged the decree upon that ground (See: Assignment of Error #2, R. 307) in the Supreme Court, but her counsel chose not to argue that in the Supreme Court of Florida, as examination of her brief on appeal (R. 317-340) will disclose. In **COOK v. CARUTHERS**, 87 Fla. 238, 99 So. 559, the Court held:

> "Under repeated decisions of the Court, assignments of error not argued will be considered as abandoned."

In **MITCHELL v. MASON**, 61 Fla. 692, 55 So. 387, the Court held:

> "Where an assignment of error is not argued in the briefs filed in the appellate court, and is not mentioned in such briefs except in a request to the court contained in such briefs that counsel be permitted to argue such assignment orally before the court, such assignment will be treated as abandoned."

Taylor, J., speaking for the Court (Text: 55 So. 388) said:

"The appellant filed an answer to the bill, to

which the appellee filed divers exceptions, many of which were sustained by the court below, and this order is also appealed from and is assigned as error.

(3) **In his brief filed here the appellant does not argue this assignment,** but as to it simply requests the court to permit him to present his argument thereon orally before the Court. This presentation of an assignment of error we must hold to be an abandonment of the assignment.

Rule 21 of the Rules of Practice for the government of this court expressly provides that each ground of error insisted upon shall be argued and separately presented with the authorities relied upon in support thereof, and provides that a copy of such brief shall be served upon opposing counsel. What notice does opposing counsel have of the points intended to be argued in an oral argument of an assignment of error unless they are set out in the appellant's brief. None whatever. And, besides, to permit an assignment of error to be presented solely by oral argument is in substance doing away with the rule requiring briefs, for, if one assignment can be thus presented, all of them can be with equal propriety, thus eliminating the rule altogether.***"

Thus, the rule, settled by more than a score of decisions of the Supreme Court of Florida, is that an assignment of error not presented and argued by Appellant in his brief is considered abandoned. Hence, in the case at

bar, Petitioner, as Appellant, abandoned her assignment of error challenging the sufficiency of the evidence to support the trial court's finding and decree (Par. (1), R. 302) on the issue of jurisdiction. Having abandoned that challenge in the Supreme Court of Florida, and in effect, having thereby withdrawn that issue from the State Court, she cannot because she is now dissatisfied with its decision, seek review of that question in this court.

**The "Due Process" clause does not confer jurisdiction on this Court to review the decree of a state Court upon the mere ground that the State Court erroneously decided an issue properly before it.**

The bald contention advanced by Petitioner (Brief: 31-37) is that the Florida Courts erroneously decided the issue of jurisdiction against her, and thereby (it is argued) denied her "due process" guaranteed by the 14th Amendment. If such a contention were sound, every disappointed suitor might with equal propriety seek review in this Court of any judgment against him, upon the plea that the State Court should have decided the facts in his favor. The mere statement of that contention carries its own refutation. In **BONNER v. GORMAN**, 213 U. S. 86, 29 S. Ct. 483, 53 L. Ed. 709, Chief Justice Fuller said:

> "It is firmly established that, when parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of the State Courts does not deprive the unsuccessful party of his property without due process of law, within the 14th Amendment of the Constitution of

the United States (Central Land Co. v. Laidley, 159 U. S. 112, 40 L. ED. 94, 16 Sup. Ct. Rep. 80) * * *"

Mr. Justice Sanford, speaking for the Court in **CORRIGAN v. BUCKLEY**, 271 U. S. 323, 46 S. Ct., 521, 70 L. Ed. 969, said:

> "Mere error of a Court if any there be, in a judgment entered after a full hearing, does not constitute a denial of due process of law."

We are confident that none of the cases cited by Petitioner announce any such rule as that contended for in the case at bar.

**The Record affirmatively refutes any contention that Petitioner was denied due process of law.**

The record in the case at bar shows that Petitioner, as defendant in the Florida proceedings was permitted to make a full defence; that the procedure was in strict accordance with the Florida statutatory procedure reviewed in foot notes. To the opinion of Chief Justice Vinson in **SHERRER v. SHERRER**, 334 U. S. 343, 68 S. Ct. 1087, 92 L. Ed. 1429, 1 A.L.R. (2d) 1355. In that case, the Chief Justice, speaking of the sufficiency of the statuatory procedure in Florida in divorce cases as affording litigants due process said:

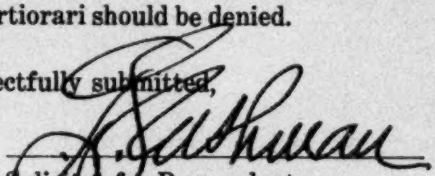
> "At the outset, it should be observed that the proceedings in the Florida Court prior to the entry of the decree of divorce were in no way in-

consistent with the requirements of procedural due process. We do not understand respondent to urge the contrary. The respondent personally appeared in the Florida proceedings. Through his attorneys he filed pleadings denying the substantial allegations of petitioner's complaint. It is not suggested that his rights to introduce evidence and otherwise conduct his defence were in any degree impaired; nor is it suggested that there was not available to him the right to seek review of the decree by appeal to the Florida Supreme Court. **It is clear that respondent was afforded his day in court** with respect to every issue involved in the litigation, including the jurisdictional issue of petitioner's domicile. **Under such circumstances, there is nothing in the concept of due process which demands that a defendant be afforded a second opportunity to litigate the existence of jurisdictional facts.** Chicago L. Ins. Co. v. Cherry, 244 U. S. 25, 61 L. Ed. 966, 37 S. Ct. 492, (1917); Baldwin v. Iowa State Traveling Men's Assoc. 283 U. S. 522, 75 L. Ed. 1244, 51 S. Ct. 517 (1931)."

Petitioner makes no contention that she was denied a right to make a defence; she makes no claim that the procedure of the state was such as to deny her a right to defend, or such as to spend in any way against the "due process" clause. The record shows beyond doubt that she had her "day in court" — her only complaint is that the decree was against her. There can be no doubt, we respectfully submit, that her contention that she was denied "due process" by the judgment of the Supreme Court of Florida is utterly devoid of merit.

For the reasons assigned, we respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,



Solicitor for Respondent,
JAMES N. JOHNSON

L. J. CUSHMAN,
707 Biscayne Building
Miami 32, Florida,
For Respondent.

CUSHMAN, GAY & WOODARD
707 Biscayne Building
Miami 32, Florida
on the Brief.